

1 Kathleen L. Wieneke, Bar #011139
2 Jennifer L. Holsman, Bar #022787
3 JONES, SKELTON & HOCHULI, P.L.C.
4 2901 North Central Avenue, Suite 800
5 Phoenix, Arizona 85012
6 Telephone: (602) 263-1771
7 Fax: (602) 200-7858
8 kwieneke@jshfirm.com
9 jholsman@jshfirm.com
minuteentries@jshfirm.com

10 Attorneys for Defendants The City Of
11 Phoenix, The City Of Phoenix Police
12 Department, Jack Harris, Steven Butler,
13 Daniel Quillman, Michael Moeller, Yvette
14 M. Moeller, Chad Shipley, Tallon Busby,
15 Molly Busby, Charles Holton, Carlie
16 Thomason and Jason Smith

17 **UNITED STATES DISTRICT COURT**
18
19 **DISTRICT OF ARIZONA**

20 ELENA J. VALDEZ, individually, and as
21 surviving daughter of Ernesto Valdez,
22 decedent, on behalf of herself and all statutory
23 claimants,

24 Plaintiffs,

25 v.

26 THE CITY OF PHOENIX, a body politic of
27 the State of Arizona; THE CITY OF
28 PHOENIX POLICE DEPARTMENT, a body
29 politic; JACK HARRIS, in his official capacity
30 as Chief of Police of City of Phoenix Police
31 Department; JACK HARRIS and JANE DOE
32 HARRIS, as husband and wife; STEVEN
33 BUTLER, in his official capacity as a sworn
34 and certified police officer of the Phoenix
35 Police Department; STEVEN BUTLER and
36 JANE DOE BUTLER, as husband and wife;
37 DANIEL QUILLMAN, in his official capacity
38 as a sworn and certified police officer of the
39 Phoenix Police Department; DANIEL
40 QUILLMAN and JANE DOE QUILLMAN, as
41 husband and wife; JASON SMITH, in his
42 official capacity as a sworn and certified police
43 officer of the Phoenix Police Department;
44 JASON SMITH and JANE DOE SMITH, as

2 NO.

3 **NOTICE OF REMOVAL**

1 husband and wife; MICHAEL MOELLER, in
2 his official capacity as a sworn and certified
3 police officer of the Phoenix Police
4 Department; MICHAEL MOELLER and
5 JANE DOE MOELLER, as husband and wife;
6 CHAD SHIPLEY, in his official capacity as a
7 sworn and certified police officer of the
8 Phoenix Police Department; CHAD SHIPLEY
9 and JANE DOE SHIPLEY, as husband and
10 wife; TALLON BUSBY, in his official
capacity as a sworn and certified police officer
of the Phoenix Police Department; TALLON
BUSBY and JANE DOE BUSBY, as husband
and wife; CHARLES HOLTON, in his official
capacity as a sworn and certified police officer
of the Phoenix Police Department; CHARLES
HOLTON and JANE DOE HOLTON, as
husband and wife; XYZ CORPORATIONS, I-
X; ABC PARTNERSHIPS, I-X; and JOHN
DOES I-X.

Defendant.

13 Defendants The City Of Phoenix, The City Of Phoenix Police Department,
14 Jack Harris, Steven Butler, Daniel Quillman, Michael Moeller, Yvette M. Moeller, Chad
15 Shipley, Tallon Busby, Molly Busby, Charles Holton, Carlie Thomason and Jason Smith,
16 through counsel, give notice of removal of the above-captioned case, CV2006-008791,
17 from Arizona Superior Court, County of Maricopa, to this Court, and in support thereof,
18 assert:

19 1. On or about June 8, 2006, an action was commenced against
20 Defendants in the Superior Court of the State of Arizona in and for the County of
21 Maricopa, under the caption, Elena Valdez v. City of Phoenix, et al., CV2006-008791.
22 Copies of all documents filed in that lawsuit are attached hereto as Exhibit "A." A copy
23 of the Notice of Filing Notice of Removal that will be filed in Maricopa County Superior
24 Court is attached hereto as Exhibit "B."

1 Defendants Tallon Busby and Steven Butler were served on September 15, 2006.
2 Defendants Molly Busby, Daniel Quillman, Michael Moeller and Charles Holton were
3 served on September 16, 2006. Defendant Carlie Thomason was served on September 19,
4 2006. Defendant Jane Doe Moeller was served on September 24, 2006. Defendant Jason
5 Smith was served on September 26, 2006.

6 3. This Notice of Removal is being filed within 30 days after
7 Defendants received the Complaint and is therefore timely filed under 28 U.S.C. §
8 1446(b).

9 4. The lawsuit filed in Maricopa County alleges violation of Plaintiffs'
10 and the decedent's civil rights under the Fourth, Fifth, and Eighth Amendments to The
11 United States Constitution. Thus, jurisdiction is proper under 28 U.S.C. § 1441 and 28
12 U.S.C. § 1331.

13 WHEREFORE, Defendants The City Of Phoenix, The City Of Phoenix
14 Police Department, Jack Harris, Steven Butler, Daniel Quillman, Michael Moeller, Yvette
15 M. Moeller, Chad Shipley, Tallon Busby, Molly Busby, Charles Holton, Carlie Thomason
16 and Jason Smith respectfully request that the above action now pending in Arizona
17 Superior Court, Maricopa County, be removed to this court.

18

19

20

21

22

23

24

25

26

1 DATED this 4th day of October, 2006.

2 JONES, SKELTON & HOCHULI, P.L.C.

3

4 By /s/ Jennifer L. Holsman

5 Kathleen L. Wieneke
6 Jennifer L. Holsman
2901 North Central Avenue, Suite 800
Phoenix, Arizona 85012

7 Attorneys for Defendants The City Of
8 Phoenix, The City Of Phoenix Police
9 Department, Jack Harris, Steven Butler,
Daniel Quillman, Michael Moeller, Yvette
M. Moeller, Chad Shipley, Tallon Busby,
Molly Busby, Charles Holton, Carlie
Thomason, Jason Smith

11 ORIGINAL of the foregoing E-filed
12 this 4th day of October, 2006.

13 COPY of the foregoing mailed
14 this 4th day of October, 2006, to:

15 Robert F. Clarke, Esq.
16 Sonja M. Yurkiw, Esq.
PHILLIPS & ASSOCIATES
16 3030 North Third Street, Suite 1100
17 Phoenix, AZ 85012

18 /s/ Peggy Sue Trakes

19 1686833.1

MICHAEL K. JEANES
Clerk of the Superior Court

1 Robert F. Clarke (AZ Bar ID # 005232)
2 Sonja M. Yurkiw (AZ Bar ID #019642)
2 PHILLIPS & ASSOCIATES
3 3030 North Third Street, Suite 1100
3 Phoenix, Arizona 85012
4 Tel: (602) 258-8900
4
5 Attorneys for Plaintiffs

By ANGELA WALKER, Deputy
Date 06/08/2006 Time 05:48 PM
Description Qty Amount
CIVIL NEW COMPLAINT 001 245.00
TOTAL AMOUNT 245.00
Receipt# 0000799404

6 ARIZONA SUPERIOR COURT

7 MARICOPA COUNTY

CV2006-008791

8 ELENA J. VALDEZ, individually, and as
9 surviving daughter of Ernesto Valdez,
decedent, on behalf of herself and all
statutory claimants,

10 Plaintiffs,

11 v

12 THE CITY OF PHOENIX, a body politic of
13 the State of Arizona ; THE CITY OF
14 PHOENIX POLICE DEPARTMENT, a
body politic; JACK HARRIS, in his official
15 capacity as Chief of Police of City of
Phoenix Police Department; JACK HARRIS
16 and JANE DOE HARRIS, as husband and
wife; STEVEN BUTLER, in his official
17 capacity as a sworn and certified police
officer of the Phoenix Police Department;
18 STEVEN BUTLER and JANE DOE
BUTLER, as husband and wife; DANIEL
19 QUILLMAN, in his official capacity as a
sworn and certified police officer of the
Phoenix Police Department; DANIEL
20 QUILLMAN and JANE DOE QUILLMAN,
as husband and wife; JASON SMITH in his
21 official capacity as a sworn and certified
police officer of the Phoenix Police
Department; JASON SMITH and JANE
22 DOE SMITH, as husband and wife;
MICHAEL MOLLER in his official
23 capacity as a sworn and certified police
officer of the Phoenix Police Department;
24 MICHAEL MOLLER and JANE DOE
MOLLER; as husband and wife; CHAD
25 SHIPLEY, in his official capacity as a sworn
and certified police officer of the Phoenix
26

No.

COMPLAINT AND DEMAND
FOR TRIAL BY JURY

(Violation of Civil Rights)

(Wrongful Death)

1 Police Department; CHAD SHIPLEY and
2 JANE DOE SHIPLEY, as husband and
3 wife; TALLON BUSBY, in his official
4 capacity as a sworn and certified police
5 officer of the Phoenix Police Department;
6 TALLON BUSBY and JANE DOE
7 BUSBY, as husband and wife; CHARLES
8 HOLTON, in his official capacity as a
9 sworn and certified police officer of the
10 Phoenix Police Department; CHARLES
11 HOLTON and JANE DOE HOLTON, as
12 husband and wife; XYZ
13 CORPORATIONS, I-X; ABC
14 PARTNERSHIPS, I-X; JOHN DOES I-X,
15 Defendants.

16
17 Defendants.

18

19 Plaintiff, Elena J. Valdez, for her causes of action against the Defendants, inclusive,
20 states and alleges as follows:

21

COMMON ALLEGATIONS

22

23 1. Plaintiff Elena J. Valdez is now, and was at all relevant times, a resident of the
24 State of Arizona and is now and was at all relevant times, the daughter of Ernesto Valdez,
25 deceased. Further, Plaintiff brings this action on her own behalf as surviving child of Ernesto
26 Valdez, deceased, and on behalf of the surviving statutory claimants as identified in A.R.S.
§12-612 (A).

27

28 2. Defendant City of Phoenix is a body politic and municipal corporation and an
29 authorized and recognized governmental entity within the State of Arizona. Said Defendant
30 is authorized by the laws of the State of Arizona (A.R.S. § 9-101, et sec.) to, among other
31 things, provide a police force and/or department of public safety and/or law enforcement
32 agency; the primary purpose of which is to recognize and enforce the laws applicable within
33 the jurisdiction of the City of Phoenix, including the City of Phoenix ordinances and laws,
34 State of Arizona statutes and laws, and the United States statutes and laws. This includes,
35

36

1 but is not limited to, recognizing and/or enforcing the laws, rights, duties, and responsibilities
2 of the Constitution of the State of Arizona and the Constitution of the United States of
3 America.

4 3. Pursuant to its authorization to, among other things, provide a police force
5 and/or department of public safety and/or law enforcement agency, the Defendant City of
6 Phoenix created, organized, developed, or otherwise established the Defendant City of
7 Phoenix Police Department, whose primary purpose is to recognize and enforce the laws
8 applicable within the jurisdiction of the City of Phoenix, including the City of Phoenix
9 ordinances and laws, State of Arizona statutes and laws and United States statutes and laws.
10 This includes, but is not limited to, recognizing and enforcing the laws, rights, duties, and
11 responsibilities of the Constitution of the State of Arizona and the Constitution of the United
12 States of America.

13 4. The Defendant City of Phoenix, acting within the scope of its authority and in
14 such manner as authorized by its charter, applicable ordinance or other law hired, employed,
15 retained, or otherwise secured the services of Defendant Jack Harris as its Chief of Police.

16 5. The Defendants City of Phoenix, City of Phoenix Police Department, and Jack
17 Harris, Chief of Police of the Defendant City of Phoenix Police Department acting within the
18 scope of its authority and in such manner as authorized by its charter, applicable ordinance
19 or other law hired, employed, retained, or otherwise secured the services of Defendant Steven
20 Butler in the capacity of a sworn and certified police officer. Further, within said capacity,
21 Defendant Butler was entrusted and obligated to recognize and enforce the laws applicable
22 within the jurisdiction of the City of Phoenix, including the City of Phoenix ordinances and
23 laws, State of Arizona statutes, laws, and United States statutes and laws.

24 6. Defendant Butler's duties included, but were not limited to, patrolling the
25 jurisdiction of the City of Phoenix and taking such enforcement as is necessary and consistent
26 with his duties as a patrol officer and his responsibilities under the laws of the City of

1 Phoenix, and the State of Arizona, and the United States, including, but not limited to, the
2 Constitution of the State of Arizona and the Constitution of the United States of America.

3 7. The Defendants City of Phoenix, City of Phoenix Police Department, and Jack
4 Harris, Chief of Police of the Defendant City of Phoenix Police Department acting within the
5 scope of its authority and in such manner as authorized by its charter, applicable ordinance
6 or other law hired, employed, retained, or otherwise secured the services of Defendant Daniel
7 Quillman in the capacity of a sworn and certified police officer. Further, within said
8 capacity, Defendant Quillman was entrusted and obligated to recognize and enforce the laws
9 applicable within the jurisdiction of the City of Phoenix, including the City of Phoenix
10 ordinances and laws, State of Arizona statutes, laws, and United States statutes and laws.

11 8. Defendant Quillman's duties included, but were not limited to, patrolling the
12 jurisdiction of the City of Phoenix and taking such enforcement as is necessary and consistent
13 with his duties as a patrol officer and his responsibilities under the laws of the City of
14 Phoenix, and the State of Arizona, and the United States, including, but not limited to, the
15 Constitution of the State of Arizona and the Constitution of the United States of America.

16 9. The Defendants City of Phoenix, City of Phoenix Police Department, and Jack
17 Harris, Chief of Police of the Defendant City of Phoenix Police Department acting within the
18 scope of its authority and in such manner as authorized by its charter, applicable ordinance
19 or other law hired, employed, retained, or otherwise secured the services of Defendant Jason
20 Smith in the capacity of a sworn and certified police officer. Further, within said capacity,
21 Defendant Smith was entrusted and obligated to recognize and enforce the laws applicable
22 within the jurisdiction of the City of Phoenix, including the City of Phoenix ordinances and
23 laws, State of Arizona statutes, laws, and United States statutes and laws.

24 10. Defendant Smith's duties included, but were not limited to, patrolling the
25 jurisdiction of the City of Phoenix and taking such enforcement as is necessary and consistent
26 with his duties as a patrol officer and his responsibilities under the laws of the City of

1 Phoenix, and the State of Arizona, and the United States, including, but not limited to, the
2 Constitution of the State of Arizona and the Constitution of the United States of America.

3 11. The Defendants City of Phoenix, City of Phoenix Police Department, and Jack
4 Harris, Chief of Police of the Defendant City of Phoenix Police Department acting within the
5 scope of its authority and in such manner as authorized by its charter, applicable ordinance
6 or other law hired, employed, retained, or otherwise secured the services of Defendant
7 Michael Moller in the capacity of a sworn and certified police officer. Further, within said
8 capacity, Defendant Moller was entrusted and obligated to recognize and enforce the laws
9 applicable within the jurisdiction of the City of Phoenix, including the City of Phoenix
10 ordinances and laws, State of Arizona statutes, laws, and United States statutes and laws.

11 12. Defendant Moller's duties included, but were not limited to, patrolling the
12 jurisdiction of the City of Phoenix and taking such enforcement as is necessary and consistent
13 with his duties as a patrol officer and his responsibilities under the laws of the City of
14 Phoenix, and the State of Arizona, and the United States, including, but not limited to, the
15 Constitution of the State of Arizona and the Constitution of the United States of America.

16 13. The Defendants City of Phoenix, City of Phoenix Police Department, and Jack
17 Harris, Chief of Police of the Defendant City of Phoenix Police Department acting within the
18 scope of its authority and in such manner as authorized by its charter, applicable ordinance
19 or other law hired, employed, retained, or otherwise secured the services of Defendant Chad
20 Shipley in the capacity of a sworn and certified police officer. Further, within said capacity,
21 Defendant Shipley was entrusted and obligated to recognize and enforce the laws applicable
22 within the jurisdiction of the City of Phoenix, including the City of Phoenix ordinances and
23 laws, State of Arizona statutes and laws, and United States statutes and laws.

24 14. Defendant Shipley's duties included, but were not limited to, patrolling the
25 jurisdiction of the City of Phoenix and taking such enforcement as is necessary and consistent
26 with his duties as a patrol officer and his responsibilities under the laws of the City of

1 Phoenix, and the State of Arizona, and the United States, including, but not limited to, the
2 Constitution of the State of Arizona and the Constitution of the United States of America.

3 15. The Defendants City of Phoenix, City of Phoenix Police Department, and Jack
4 Harris, Chief of Police of the Defendant City of Phoenix Police Department acting within the
5 scope of its authority and in such manner as authorized by its charter, applicable ordinance
6 or other law hired, employed, retained, or otherwise secured the services of Defendant Tallon
7 Busby in the capacity of a sworn and certified police officer. Further, within said capacity,
8 Defendant Busby was entrusted and obligated to recognize and enforce the laws applicable
9 within the jurisdiction of the City of Phoenix, including the City of Phoenix ordinances and
10 laws, State of Arizona statutes, laws, and United States statutes and laws.

11 16. Defendant Busby's duties included, but were not limited to, patrolling the
12 jurisdiction of the City of Phoenix and taking such enforcement as is necessary and consistent
13 with his duties as a patrol officer and his responsibilities under the laws of the City of
14 Phoenix, and the State of Arizona, and the United States, including, but not limited to, the
15 Constitution of the State of Arizona and the Constitution of the United States of America.

16 17. The Defendants City of Phoenix, City of Phoenix Police Department, and Jack
17 Harris, Chief of Police of the Defendant City of Phoenix Police Department acting within the
18 scope of its authority and in such manner as authorized by its charter, applicable ordinance
19 or other law hired, employed, retained, or otherwise secured the services of Defendant
20 Charles Holton in the capacity of a sworn and certified police officer. Further, within said
21 capacity, Defendant Holton was entrusted and obligated to recognize and enforce the laws
22 applicable within the jurisdiction of the City of Phoenix, including the City of Phoenix
23 ordinances and laws, State of Arizona statutes, laws, and United States statutes and laws.

24 18. Defendant Holton's duties included, but were not limited to, patrolling the
25 jurisdiction of the City of Phoenix and taking such enforcement as is necessary and consistent
26 with his duties as a patrol officer and his responsibilities under the laws of the City of

1 Phoenix, and the State of Arizona, and the United States, including, but not limited to, the
2 Constitution of the State of Arizona and the Constitution of the United States of America.

3 19. All acts, errors, and omissions complained of herein regarding the Defendant
4 Jack Harris were for and on behalf of the marital community consisting of Defendant Jack
5 Harris and Defendant Jane Doe Harris. The true name and identity of the Defendant Jane Doe
6 Harris is currently unknown. Plaintiff will seek leave to amend this complaint to insert said
7 true name and identify when same become known.

8 20. All acts errors, and omissions complained of herein regarding the Defendant
9 Steven Butler were for and on behalf of the marital community consisting of Defendant
10 Steven Butler and Defendant Jane Doe Butler. The true name and identity of the Defendant
11 Jane Doe Butler is currently unknown. Plaintiff will seek leave to amend this complaint to
12 insert said true name and identify when same become known.

13 21. All acts, errors, and omissions complained of herein regarding the Defendant
14 Daniel Quillman were for and on behalf of the marital community consisting of Defendant
15 Daniel Quillman and Defendant Jane Doe Quillman. The true name and identity of the
16 Defendant Jane Doe Quillman is currently unknown. Plaintiff will seek leave to amend this
17 complaint to insert said true name and identify when same become known.

18 22. All acts, errors, and omissions complained of herein regarding the Defendant
19 Jason Smith were for and on behalf of the marital community consisting of Defendant Jason
20 Smith and Defendant Jane Doe Smith. The true name and identity of the Defendant Jane Doe
21 Smith is currently unknown. Plaintiff will seek leave to amend this complaint to insert said
22 true name and identify when same become known.

23 23. All acts, errors, and omissions complained of herein regarding the Defendant
24 Michael Moller were for and on behalf of the marital community consisting of Defendant
25 Michael Moller and Defendant Jane Doe Moller. The true name and identity of the Defendant
26 Jane Doe Moller is currently unknown. Plaintiff will seek leave to amend this complaint to

1 insert said true name and identify when same become known.

2 24. All acts, errors, and omissions complained of herein regarding the Defendant
3 Chad Shipley were for and on behalf of the marital community consisting of Defendant Chad
4 Shipley and Defendant Jane Doe Shipley. The true name and identity of the Defendant Jane
5 Doe Shipley is currently unknown. Plaintiff will seek leave to amend this complaint to insert
6 said true name and identify when same become known.

7 25. All acts, errors, and omissions complained of herein regarding the Defendant
8 Tallon Busby were for and on behalf of the marital community consisting of Defendant
9 Tallon Busby and Defendant Jane Doe Busby. The true name and identity of the Defendant
10 Jane Doe Busby is currently unknown. Plaintiff will seek leave to amend this complaint to
11 insert said true name and identify when same become known.

12 26. All acts, errors, and omissions complained of herein regarding the Defendant
13 Charles Holton were for and on behalf of the marital community consisting of Defendant
14 Charles Holton and Defendant Jane Doe Holton. The true name and identity of the Defendant
15 Jane Doe Harris is currently unknown. Plaintiff will seek leave to amend this complaint to
16 insert said true name and identify when same become known.

17 27. The defendants sued herein as XYZ Corporations I-X, ABC Partnerships I-X,
18 and JOHN DOES I-X (collectively, the "Fictitiously Named Defendants"), are the agents,
19 employees, principals, representatives, staff members, wholly owned subsidiaries, holding
20 companies, and/or bear some other relationship to Defendants to such an extent that any or
21 all of such fictitious defendants may be liable, in whole, or in part, for the actions of the
22 Defendants as alleged herein. All references to Defendants shall include the fictitiously
23 named defendants. Further, the true names and identities of the fictitiously named defendants
24 are currently unknown and Plaintiff will seek leave to amend this complaint when said names
25 and identities become known.

26 28. All acts, errors, and omissions complained of herein occurred in Maricopa

1 County, Arizona.

2 29. The amount in controversy exceeds the minimal jurisdictional requirements.

3 This Court has jurisdiction and venue is proper..

4 30. Pursuant to ARS §12-821.01, Plaintiff and decedent's statutory beneficiaries
5 timely served Defendant City with an administrative claim for damages. Said Notice of
6 Claim stated the nature of the claim, the date of occurrence and the amount for which the
7 claim could be settled. Further, Defendant City failed to respond to said claim and said claim
8 has been denied by operation of law.

9 31. On or about July 15, 2005, within the jurisdictional limits and scope of
10 authority of the Defendants, inclusive, Defendant Steven Butler, Defendant Daniel Quillman,
11 Defendant Jason Smith, Defendant Michael Moller, Defendant Chad Shipley, Defendant
12 Tallon Busby and Defendant Charles Holton attempted to take into custody or otherwise
13 detain decedent Ernesto Valdez. Further, Defendant Steven Butler, Defendant Daniel
14 Quillman, Defendant Jason Smith, Defendant Michael Moller, Defendant Chad Shipley,
15 Defendant Tallon Busby and Defendant Charles Holton acted under color of statute,
16 ordinance, regulation, custom, and/or usage of the City of Phoenix and State of Arizona and
17 did so within their official capacity of sworn and certified police officers of the City of
18 Phoenix. Such conduct on the part of Defendant Steven Butler, Defendant Daniel Quillman,
19 Defendant Jason Smith, Defendant Michael Moller, Defendant Chad Shipley, Defendant
20 Tallon Busby and Defendant Charles Holton was within the course and scope of their
21 employment and duties with the Defendants City of Phoenix and City of Phoenix Police
22 Department and was for and on behalf of the Defendants, inclusive.

23 32. Based on information, Ernesto Valdez arrived at the Church's Chicken
24 restaurant located at 717 West Grand Avenue, Phoenix, Arizona, 85007, at approximately
25 midnight on July 15, 2005.

26 33. Based on information, an employee of the restaurant was exiting the restaurant

1 when he was approached by Ernesto Valdez. It is further believed that Ernesto Valdez
2 entered the Church's Chicken restaurant against protest by the three employees present at the
3 restaurant.

4 34. Based upon information, the three restaurant employees exited the restaurant
5 and locked the doors; locking Ernesto Valdez in the Church's Chicken restaurant by himself.
6 It is further believed that one of the employees used his cellular telephone to call 9-1-1.

7 35. Based on information, Defendant Charles Holton was the first Phoenix Police
8 officer to arrive at the Church's Chicken restaurant in response to the 9-1-1 call. It is further
9 believed that Defendant Charles Holton obtained the keys to the restaurant from one of the
10 employees and then called in for more officers to assist him.

11 36. Based on information, Defendant Dan Quillman then arrived at the Church's
12 Chicken restaurant in response to the call for additional officers and went to the rear of the
13 restaurant.

14 37. Based on information, Defendant Chad Shipley was next to arrive at the
15 Church's Chicken restaurant in response to the call for additional officers. It is further
16 believed that once Defendant Chad Shipley was at the scene he observed a distraught Ernesto
17 Valdez inside the Church's Chicken restaurant.

18 38. Based on information, Defendant Michael Moller was next to arrive at the
19 Church's Chicken restaurant in response to the call for additional officers. It is further
20 believed that once Defendant Michael Moller was at the scene he observed a distraught
21 Ernesto Valdez inside the Church's Chicken restaurant rocking back and forth by the counter
22 clutching a Bible to his chest.

23 39. Based on information, Defendant Charles Holton, Defendant Chad Shipley and
24 Defendant Michael Moller met at the front of the Church's Chicken restaurant to devise a
25 plan to take Ernesto Valdez into custody. The three defendants had ascertained that Ernesto
26 Valdez was unarmed.

1 40. Based on information, Defendant Steven Butler, Defendant Tallon Busby and
2 Defendant Jason Smith arrived at the Church's Chicken restaurant but took no immediate
3 action.

4 41. Based on information, Ernesto Valdez was at this time sitting against one of
5 the two front doors, with his back against the door, clutching his Bible to his chest.

6 42. Based on information, Defendant Michael Moller unlocked the front door and
7 when he did so, Ernesto Valdez attempted to exit the Church's Chicken restaurant.

8 43. Based on information, Defendant Charles Holton and Defendant Chad Shipley
9 brought Ernesto Valdez to the ground forcefully. It is further believed that a struggle ensued.

10 44. Based on information, Defendant Charles Holton attempted to bring Ernesto
11 Valdez' left arm behind Ernesto's back at the same time Defendant Michael Moller
12 attempted to bring Ernesto Valdez' right arm behind Ernesto's back in order to put handcuffs
13 on Ernesto Valdez' wrists while Defendant Chad Shipley put his whole body weight on
14 Ernesto Valdez.

15 45. Based on information, Ernesto Valdez was still clutching his Bible underneath
16 him and talking about God.

17 46. Based on information, Defendant Steven Butler and Defendant Tallon Busby
18 came to assist Defendant Charles Holton, Defendant Michael Moller and Defendant Chad
19 Shipley take Ernesto Valdez into custody.

20 47. Based on information, Defendant Tallon Busby held the restaurant door open,
21 Defendant Steven Butler held Ernesto Valdez' chest down. It is further believed Defendant
22 Charles Holton, Defendant Michael Moller and Defendant Chad Shipley remained in their
23 stated positions.

24 48. Based on information, the struggle between defendants and Ernesto Valdez
25 continued to move to outside of the Church's Chicken restaurant at which time Defendant
26 Tallon Busby placed his foot on Ernesto Valdez' neck and head.

1 49. Based on information, Defendant Steven Butler proceeded to taser Ernesto
2 Valdez in Ernesto Valdez' lower back and upper left arm and Defendant Chad Shipley
3 proceeded to taser Ernesto Valdez on Ernesto Valdez' left calf.

4 50. Based on information, Ernesto Valdez screamed, Defendant Steven Butler
5 continued to taser Ernesto Valdez and Defendant Chad Shipley tasered Ernesto Valdez again
6 in the left leg and struck Ernesto Valdez repeatedly with his knee.

7 51. Based on information, Tallon Busby placed additional pressure on the neck and
8 head of Ernesto Valdez.

9 52. Based on information, Defendant Steven Butler and Defendant Michael Moller
10 placed handcuffs on Ernesto Valdez.

11 53. Based on information, Ernesto Valdez struggled to breath as his body endured
12 the weight of five police officers and the trauma of being tasered ten different times

13 54. Based on information, defendants made the decision to place a ripp restraint
14 on Ernesto Valdez' ankles. It is further believed that as the restraint was being put on
15 Ernesto Valdez' ankles, Defendant Michael Moller used his hand to hold Ernesto Valdez'
16 head down, Defendant Jason Smith placed his knee or foot on Ernesto Valdez' legs,
17 Defendant Tallon Busby kneeled on Ernesto Valdez' lower back, and Defendant Steven
18 Butler and another officer braced Ernesto Valdez' upper torso.

19 55. Based on information, Ernesto Valdez appeared subdued and was rolled over
20 onto his left side.

21 56. Based on information, Ernesto Valdez then fell down the stairs in front of the
22 Church's Chicken restaurant.

23 57. Based on information, Phoenix Police officer Andrew Hoeningman arrived at
24 the Church's Chicken restaurant. It is further believed that Phoenix Police officer Andrew
25 Hoeningman observed that Ernesto Valdez was extremely flushed in the face with purple
26 spots over his body.

1 58. Based on information, defendants rolled Ernesto Valdez onto his stomach and
2 once again used their bodies to restrict Ernesto Valdez' movement. It is further believed that
3 Defendant Steven Butler put pressure on Ernesto Valdez' upper body, Defendant Jason Smith
4 put his foot in Ernesto Valdez' lower back, Defendant Tallon Busby put pressure on Ernesto
5 Valdez' shoulders, Andrew Hoeningman put pressure on Ernesto Valdez' back and
6 Defendant Dan Quillman put a spit mask over the head and face of Ernesto Valdez.

7 59. Based on information, Sergeant Frank Matsko arrived at the scene of the
8 Church's Chicken restaurant.

9 60. Based on information, upon learning that Ernesto Valdez had been tasered
10 multiple times and seeing that Ernesto Valdez was lying on his stomach with several officers
11 on top of him, Sergeant Frank Matsko instructed the officers to roll Ernesto Valdez onto his
12 left side.

13 61. Based on information, upon Ernesto Valdez being rolled onto his left side,
14 Sergeant Frank Matsko observed Ernesto Valdez' lips move as if Ernesto Valdez was
15 exhaling and then it appeared as though Ernesto Valdez stopped breathing.

16 62. Based on information, Phoenix Fire Department arrived at the scene of
17 Church's Chicken restaurant, however, Ernesto Valdez was deceased.

18 63. Based on information, Defendant Michael Moller, Defendant Jason Smith,
19 Defendant Tallon Busby, Defendant Steven Butler, Defendant Dan Quillman, and Defendant
20 Chad Shipley knew or should have known the risk of harm to Ernesto Valdez due to the
21 obvious and extreme nature of Ernesto Valdez' abnormal behavior.

22 64. Based on information, Defendant Michael Moller, Defendant Jason Smith,
23 Defendant Tallon Busby, Defendant Steven Butler, Defendant Dan Quillman, and Defendant
24 Chad Shipley acted with negligent indifference to the medical condition of Ernesto Valdez.

25 65. Defendant Michael Moller, Defendant Jason Smith, Defendant Tallon Busby,
26 Defendant Steven Butler, Defendant Dan Quillman, and Defendant Chad Shipley, on behalf

1 of the Defendants, inclusive, and acting under color of statute, ordinance, regulation, custom,
2 and/or usage of the City of Phoenix and State of Arizona were negligent, careless, and
3 reckless in their attempts to detain decedent Ernesto Valdez.

4 66. In the alternative, Defendant Michael Moller, Defendant Jason Smith,
5 Defendant Tallon Busby, Defendant Steven Butler, Defendant Dan Quillman, and Defendant
6 Chad Shipley, for and on behalf of the Defendants, inclusive, and acting under color of
7 statute, ordinance, regulation, custom, and/or usage of the City of Phoenix and State of
8 Arizona were negligent, careless, and reckless, and acted in a manner inconsistent with
9 decedent Ernesto Valdez' legal rights as a person within the jurisdiction of Arizona and the
10 United States and such negligence, carelessness and recklessness was the proximate cause
11 decedent Ernesto Valdez' death.

12 67. Hereafter, reference to Defendants, inclusive shall include any Defendant
13 singularly, any combination of Defendants an/or all Defendants collectively.

14 **COUNT 1**

15 **WRONGFUL DEATH**

16 68. Plaintiff re-pleads and re-alleges those allegations contained in paragraphs 1-67
17 and incorporates those paragraphs herein by this reference.

18 69. The actions of Defendants, inclusive, caused the wrongful death of Plaintiff's
19 decedent, Ernesto Valdez and Defendants, inclusive, are liable pursuant to A.R.S. §12-611
20 and A.R.S. §12-612 to Plaintiff and the other statutory claimants for said wrongful death.

21 70. As a direct and proximate result of the negligence, careless, and reckless
22 conduct of the Defendants, inclusive, as alleged above and as a direct and proximate result
23 of the wrongful death of the decedent, Ernesto Valdez, Plaintiff Elena J. Valdez and the
24 statutory claimants on whose behalf Plaintiff brings this action have been forever deprived
25 of the love, care, attention, fellowship and companionship of decedent Ernesto Valdez and
26 has been generally damaged thereby.

1 71. As a further direct and proximate result of the negligence, careless, and
2 reckless conduct of the Defendants, inclusive, as alleged above and as a direct and proximate
3 result of the wrongful death of the decedent, Ernesto Valdez, Plaintiff has incurred expenses
4 for last illness, funeral, and other related expenses in an amount to be determined by the trier
5 of fact.

COUNT 2

VIOLATION OF ARIZONA CONSTITUTION ARTICLE 2, § 4

8 72. Plaintiff re-pleads and re-alleges those allegations contained in paragraphs 1-71
9 and incorporates those paragraphs herein by this reference.

10 73. Defendants, inclusive, and acting under color of statute, ordinance, regulation,
11 custom, and/or usage of the City of Phoenix and State of Arizona deprived decedent, Ernesto
12 Valdez, of life and/or liberty without due process of law in violation of Ariz. Const. Article
13 2, § 4. As a direct and proximate result of said deprivation, Plaintiff's decedent died while
14 in the exclusive custody and control of Defendants, inclusive.

15 74. As a direct and proximate result of Defendants' inclusive, deprivation of
16 decedent Ernesto Valdez' rights guaranteed by Ariz. Const. Article 2, § 4, decedent Ernesto
17 Valdez died and Plaintiff Elena J. Valdez and the statutory claimants on whose behalf
18 Plaintiff brings this action have been forever deprived of the love, care, attention, fellowship,
19 and companionship of decedent Ernesto Valdez and has been generally damaged thereby.

20 75. As a direct and proximate result of Defendants' inclusive, deprivation of
21 decedent Ernesto Valdez' rights guaranteed by Ariz. Const. Article 2, § 4, decedent Ernesto
22 Valdez died and Plaintiff has incurred expenses for last illness, funeral, and other related
23 expenses in an amount to be determined by the trier of fact.

COUNT 3

42 U.S.C. § 1983 CLAIM

76. Plaintiff re-pleads and re-alleges those allegations contained in paragraphs 1-75

1 and incorporates those paragraphs herein by this reference.

2 77. Defendants, inclusive, and acting under color of statute, ordinance, regulation,
3 custom, and/or usage of the City of Phoenix and State of Arizona deprived decedent Ernesto
4 Valdez of his constitutional rights under Amendments 4, 5, and 8 of the U.S. Constitution
5 and such deprivations constitute violations of 42 U.S.C. § 1983.

6 78. As a direct and proximate result of Defendants' inclusive, violation of
7 Amendments 4, 5, and 8 of the U.S. Constitution, decedent Ernesto Valdez died.

8 79. As a further direct and proximate result of Defendants' inclusive, violation of
9 Amendments 4, 5, and 8 of the U.S. Constitution said Defendants, inclusive, violated
10 decedent Ernesto Valdez' civil rights.

11 80. As a further direct and proximate result of Defendants' inclusive, deprivation
12 of decedent Ernesto Valdez' civil rights and as a direct and proximate of the wrongful death
13 of decedent Ernesto Valdez, Plaintiff Elena J. Valdez and the statutory claimants on whose
14 behalf Plaintiff brings this action have been forever deprived of the love, care, attention,
15 fellowship, companionship, and advice of decedent Ernesto Valdez and has been generally
16 damaged thereby.

17 81. As a further direct and proximate result of Defendants' inclusive, deprivation
18 of decedent Ernesto Valdez' civil rights and as a direct and proximate of the wrongful death
19 of decedent Ernesto Valdez, Plaintiff and the statutory claimants on whose behalf Plaintiff
20 brings this action have incurred expenses for last illness, funeral, and other related expenses
21 in an amount to be determined by the trier of fact.

22 82. Pursuant to 42 U.S.C. § 1983 and 42 U.S.C. § 1988 Plaintiff, on her own behalf
23 on behalf of the other statutory claimants of decedent Ernesto Valdez, is entitled of an award
24 of attorney's fees against the Defendants, inclusive, for their violation of Amendments 4, 5,
25 and 8 of the U.S. Constitution in their deprivation of decedent Ernesto Valdez' civil rights
26 guaranteed under the United States Constitution pursuant to 42 U.S.C. § 1988.

DEMAND FOR JURY TRIAL

2 Plaintiff, on her own behalf and on behalf of the statutory claimants of decedent
3 Ernesto Valdez, demands that this matter be set for trial by jury.

4 . . . Wherefore, on the foregoing counts against the Defendants, inclusive, Plaintiff, on her
5 own behalf and on behalf of the statutory claimants of decedent Ernesto Valdez, prays as
6 follows:

7 a. For general damages in an amount sufficient to fully and fairly compensate
8 Plaintiff and all other statutory claimants of the wrongful death of Ernesto
9 Valdez, in an amount to be proven at the time of trial together with interest
10 thereon at the highest lawful rate from the date of judgment until paid in full;
11 b. For special damages in an amount determined by the trier of fact to fully and
12 fairly compensate Plaintiff for the expenses for last illness, funeral, and other
13 related expenses suffered due to the wrongful death of decedent Ernesto
14 Valdez, together with interest thereon at the highest lawful rate from the date
15 said loss was incurred until paid in full;
16 c. For attorneys fees pursuant to 42 U.S.C. § 1988 for Defendants, inclusive, for
17 the deprivation of decedent's civil rights guaranteed under the United States
18 Constitution, together with interest thereon at the highest lawful rate from the
19 date of judgment until paid in full;
20 d. For such other and further relief as the court deems just and proper in the
21 premises.

22

23 // 11

24 | *|||||*

25 III

RESPECTFULLY SUBMITTED this 8th day of June 2006.

PHILLIPS & ASSOCIATES

By

Robert F. Clarke
Sonja M. Yurkiw
3030 North Third Street, Suite 1100
Phoenix, Arizona 85012
Attorneys for Plaintiff

Kathleen L. Wieneke, Bar #011139
Jennifer L. Holsman, Bar #022787
JONES, SKELTON & HOCHULI, P.L.C.
2901 North Central Avenue, Suite 800
Phoenix, Arizona 85012
Telephone: (602) 263-1771
Fax: (602) 200-7858
kwieneke@jshfirm.com
jholsman@jshfirm.com
minuteentries@jshfirm.com

Attorneys for Defendants The City Of Phoenix, The City Of Phoenix Police Department, Jack Harris, Steven Butler, Daniel Quillman, Michael Moeller, Yvette M. Moeller, Chad Shipley, Tallon Busby, Molly Busby, Charles Holton, Carlie Thomason, Jason Smith

**SUPERIOR COURT OF THE STATE OF ARIZONA
COUNTY OF MARICOPA**

ELENA J. VALDEZ, individually, and as surviving daughter of Ernesto Valdez, decedent, on behalf of herself and all statutory claimants.

NO. CV2006-008791

Plaintiffs.

V.

**NOTICE OF FILING NOTICE OF
REMOVAL**

(Assigned to the Hon. Ruth Hilliard)

THE CITY OF PHOENIX, a body politic of the State of Arizona; THE CITY OF PHOENIX POLICE DEPARTMENT, a body politic; JACK HARRIS, in his official capacity as Chief of Police of City of Phoenix Police Department; JACK HARRIS and JANE DOE HARRIS, as husband and wife; STEVEN BUTLER, in his official capacity as a sworn and certified police officer of the Phoenix Police Department; STEVEN BUTLER and JANE DOE BUTLER, as husband and wife; DANIEL QUILLMAN, in his official capacity as a sworn and certified police officer of the Phoenix Police Department; DANIEL QUILLMAN and JANE DOE QUILLMAN, as husband and wife; JASON SMITH, in his official capacity as a sworn and certified police officer of the Phoenix Police Department;

1 JASON SMITH and JANE DOE SMITH, as
2 husband and wife; MICHAEL MOELLER, in
3 his official capacity as a sworn and certified
4 police officer of the Phoenix Police
5 Department; MICHAEL MOELLER and
6 JANE DOE MOELLER, as husband and wife;
7 CHAD SHIPLEY, in his official capacity as a
8 sworn and certified police officer of the
9 Phoenix Police Department; CHAD SHIPLEY
10 and JANE DOE SHIPLEY, as husband and
11 wife; TALLON BUSBY, in his official
capacity as a sworn and certified police officer
of the Phoenix Police Department; TALLON
BUSBY and JANE DOE BUSBY, as husband
and wife; CHARLES HOLTON, in his official
capacity as a sworn and certified police officer
of the Phoenix Police Department; CHARLES
HOLTON and JANE DOE HOLTON, as
husband and wife; XYZ CORPORATIONS, I-
X; ABC PARTNERSHIPS, I-X; and JOHN
DOES I-X.

Defendant.

Defendants The City Of Phoenix, The City Of Phoenix Police Department, Jack Harris, Steven Butler, Daniel Quillman, Michael Moeller, Yvette M. Moeller, Chad Shipley, Tallon Busby, Molly Busby, Charles Holton, Carlie Thomason and Jason Smith, through counsel, hereby notify this Court that, pursuant to 28 U.S.C. § 1441, *et seq.*, they have filed a Notice of Removal of this action to the United States District Court for the District of Arizona. A copy of the Notice of Removal filed October 2, 2006 is attached hereto as Exhibit A.

1 RESPECTFULLY SUBMITTED this 4th day of October, 2006.

2 JONES, SKELTON & HOCHULI, P.L.C.

3

4 By Jennifer Holsman

5 Kathleen L. Wieneke
6 Jennifer L. Holsman
2901 North Central Avenue, Suite 800
Phoenix, Arizona 85012

7 Attorneys for Defendants The City Of
8 Phoenix, The City Of Phoenix Police
9 Department, Jack Harris, Steven Butler,
Daniel Quillman, Michael Moeller, Yvette
M. Moeller, Chad Shipley, Tallon Busby,
Molly Busby, Charles Holton, Carlie
Thomason, Jason Smith

11 ORIGINAL of the foregoing filed
12 this 4th day of October, 2006.

13 Michael K. Jeanes
14 Clerk of the Superior Court
101/201 W. Jefferson (ECB-CCB)
Phoenix, AZ 85003-2205

15 COPY of the foregoing mailed
16 this 4th day of October, 2006, to:

17 Robert F. Clarke, Esq.
18 Sonja M. Yurkiw, Esq.
PHILLIPS & ASSOCIATES
19 3030 North Third Street, Suite 1100
Phoenix, AZ 85012

20 Peggy Sue Akers

21 1686835.1

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing or service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Elena Valdez, individually, as surviving daughter of Ernesto Valdez, decedent, on behalf of herself and all statutory claimants,

(b) County of Residence of First Listed Plaintiff Maricopa
(EXCEPT IN U.S. PLAINTIFF CASES)

DEFENDANTS

The City of Phoenix; The City of Phoenix Police Department; Jack Harris as Chief of Police of Phoenix Police Department; Jack and Jane Doe Harris; (see attached)

County of Residence of First Listed Defendant Maricopa
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

(c) Attorney's (Firm Name, Address, and Telephone Number)
Robert F. Clarke, #005232/Sonja M. Yurkew, #019642, Phillips & Associates, 3030 N. 3rd St., # 1100, Phoenix, AZ 85012 (602) 258-8900

Kathleen L. Wieneke, #011139/Jennifer L. Holsman, #022787, Jones, Skelton & Hochuli, 2901 N. Central, #800, Phoenix, AZ 85012 (602) 263-7310

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

1 U.S. Government Plaintiff 3 Federal Question (U.S. Government Not a Party)
 2 U.S. Government Defendant 4 Diversity
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF	PTF	DEF	
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	PERSONAL INJURY	PERSONAL INJURY	PROPERTY RIGHTS	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	SOCIAL SECURITY	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 861 HIA (1395f)	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 864 SSDI Title XVI	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 390 Other Personal Injury	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 510 Selective Service
<input type="checkbox"/> 190 Other Contracts	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 410 Voting	FEDERAL TAX SUITS	<input type="checkbox"/> 850 Securities/Commodities/ Exchange
<input type="checkbox"/> 195 Contract Product Liability		<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
<input type="checkbox"/> 196 Franchise		<input type="checkbox"/> 443 Housing/ Accommodations	<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY	CIVIL RIGHTS	Habeas Corpus	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 892 Economic Stabilization Act
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 530 General		<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Welfare	<input type="checkbox"/> 535 Death Penalty		<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 540 Mandamus & Other		<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 446 Amer. w/Disabilities - Other	<input type="checkbox"/> 550 Civil Rights		<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 555 Prison Condition		<input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from another district (specify) 6 Multidistrict Litigation 7 Appeal to District Judge from Magistrate Judgment

Cite the U.S. Civil Statute under which you are filing. (Do not cite jurisdictional statutes unless diversity):
42 U.S.C. Sec. 1983

VI. CAUSE OF ACTION

Brief description of cause:
Plaintiffs allege violation of their 4th, 5th and 8th Amendment rights under 42 U.S.C. Sec. 1983 against Defendants.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION DEMAND \$
UNDER F.R.C.P. 23
CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD
10/02/2006 Jennifer L. Holsman, #022787

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. Do not cite jurisdictional statutes unless diversity. Example: U.S. Civil Statute: 47 USC 553
Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

Defendants (cont'd)

STEVEN BUTLER, in his official capacity as a sworn and certified police officer of the Phoenix Police Department; STEVEN BUTLER and JANE DOE BUTLER, as husband and wife; DANIEL QUILLMAN, in his official capacity as a sworn and certified police officer of the Phoenix Police Department; DANIEL QUILLMAN and JANE DOE QUILLMAN, as husband and wife; JASON SMITH, in his official capacity as a sworn and certified police officer of the Phoenix Police Department; JASON SMITH and JANE DOE SMITH, as husband and wife; MICHAEL MOELLER, in his official capacity as a sworn and certified police officer of the Phoenix Police Department; MICHAEL MOELLER and JANE DOE MOELLER, as husband and wife; CHAD SHIPLEY, in his official capacity as a sworn and certified police officer of the Phoenix Police Department; CHAD SHIPLEY and JANE DOE SHIPLEY, as husband and wife; TALLON BUSBY, in his official capacity as a sworn and certified police officer of the Phoenix Police Department; TALLON BUSBY and JANE DOE BUSBY, as husband and wife; CHARLES HOLTON, in his official capacity as a sworn and certified police officer of the Phoenix Police Department; CHARLES HOLTON and JANE DOE HOLTON, as husband and wife; XYZ CORPORATIONS, I-X; ABC PARTNERSHIPS, I-X; and JOHN DOES I-X, Defendant.

**SUPPLEMENTAL CIVIL COVER SHEET
FOR CASES REMOVED FROM ANOTHER JURISDICTION**

This form must be attached to the Civil Cover Sheet at the time the case is filed in the United States District Clerk's Office. Additional sheets may be used as necessary.

1. Style of the Case:

Please include all Plaintiff(s), Defendant(s), Intervenor(s), Counterclaimant(s), Cross-Claimant(s) and Third Party Claimant(s) still remaining in the case and indicate their party type. Also, please list the attorney(s) of record for each party named and include their bar number, firm name, correct mailing address, and phone number (including area code).

<u>Party</u>	<u>Party Type</u>	<u>Attorney(s)</u>
ELENA J. VALDEZ, individually, and as surviving daughter of Ernesto Valdez, decedent, on behalf of herself and all statutory claimants	Plaintiff	Robert F. Clarke, Esq. Sonja M. Yurkiw, Esq. PHILLIPS & ASSOCIATES 3030 North Third Street, #1100 Phoenix, AZ 85012 (602) 258-8900
THE CITY OF PHOENIX, a body politic of the State of Arizona; THE CITY OF PHOENIX POLICE DEPARTMENT, a body politic; JACK HARRIS, in his official capacity as Chief of Police of City of Phoenix Police Department; JACK HARRIS and JANE DOE HARRIS, as husband and wife; STEVEN BUTLER, in his official capacity as a sworn and certified police officer of the Phoenix Police Department; STEVEN BUTLER and JANE DOE BUTLER, as husband and wife; DANIEL QUILLMAN, in his official capacity as a sworn and certified police officer of the Phoenix Police Department; DANIEL QUILLMAN and JANE DOE QUILLMAN, as husband and wife; JASON SMITH, in his official capacity as a sworn and certified police officer of the Phoenix Police Department; JASON SMITH and JANE DOE SMITH, as husband and wife; MICHAEL MOELLER, in his official capacity as a sworn and certified police	Defendants	Kathleen Wieneke, #011139 Jennifer L. Holsman, #022787 JONES, SKELTON & HOCHULI, P.L.C. 2901 N. Central Avenue, #800 Phoenix, Arizona 85012 (602) 263-1771

officer of the Phoenix Police Department; MICHAEL MOELLER and JANE DOE MOELLER, as husband and wife; CHAD SHIPLEY, in his official capacity as a sworn and certified police officer of the Phoenix Police Department; CHAD SHIPLEY and JANE DOE SHIPLEY, as husband and wife; TALLON BUSBY, in his official capacity as a sworn and certified police officer of the Phoenix Police Department; TALLON BUSBY and JANE DOE BUSBY, as husband and wife; CHARLES HOLTON, in his official capacity as a sworn and certified police officer of the Phoenix Police Department; CHARLES HOLTON and JANE DOE HOLTON, as husband and wife; XYZ CORPORATIONS, I-X; ABC PARTNERSHIPS, I-X; and JOHN DOES I-X,

2. Jury Demand:

Was a Jury Demand made in another jurisdiction? Yes No
If "Yes," by which party and on what date?

Plaintiff on 6/8/06 _____

3. Answer:

Was an Answer made in another jurisdiction? Yes No
If "yes," by which party and on what date?

4. Served Parties:

The following parties have been served at the time this case was removed:

Party	Date Served	Method of Service
The City of Phoenix	9/14/06	Process Server
Jack Harris	9/14/06	Process Server
Chad Shipley	9/14/06	Process Server
The City of Phoenix Police Department	9/14/06	Process Server
Steven Butler	9/15/06	Process Server
Tallon Busby	9/15/06	Process Server
Molly Busby	9/16/06	Process Server
Daniel Quillman	9/16/06	Process Server

Michael Moeller	9/16/06	Process Server
Charles Holton	9/16/06	Process Server
Carlie Thomason	9/19/06	Process Server
Jane Doe Moeller (a/k/a Yvette M. Moeller)	9/24/06	Process Server
Jason Smith	9/26/06	Process Server

5. Unserved Parties:

The following parties have not been served at the time this case was removed:

<u>Party</u>	<u>Reason Not Served</u>
--------------	--------------------------

6. Nonsuited, Dismissed or Terminated Parties:

Please indicate changes from the style of the papers from another jurisdiction and the reason for the change:

<u>Party</u>	<u>Reason for Change</u>
--------------	--------------------------

7. Claims of the Parties:

The filing party submits the following summary of the remaining claims of each party in this litigation:

<u>Party</u>	<u>Claims</u>
Plaintiffs against all Defendants	42 U.S.C. § 1983, Fourth Amendment, Fifth Amendment, Eighth Amendment, Arizona Constitution Article 2, § 4, A.R.S. §§12-611, 12-612

Pursuant to 28 U.S.C. § 1446(a) a copy of all process, pleadings, and orders served in another jurisdiction (State Court) shall be filed with this removal.